

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

D. SULLIVAN AND
M. SULLIVAN

) OTA Case No. 220911273
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OPINION

Representing the Parties:

For Appellants: D. Sullivan
M. Sullivan

For Respondent: Brian Werking, Tax Counsel III

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Sullivan and M. Sullivan (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$9,525.64 for the 2016 tax year.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether the statute of limitations bars appellants’ claim for refund for the 2016 tax year.

FACTUAL FINDINGS

1. Appellants sold property for which income tax was withheld on their behalf. Appellants did not timely file their joint 2016 California individual income tax return (return).
2. FTB issued appellants a Notice of Proposed Assessment (NPA) for the 2016 tax year. Appellants did not respond and the NPA went final.
3. FTB initiated collection action and imposed a notice and demand penalty of \$407.50 and a collection cost recovery fee of \$317.00. Between December 10, 2018, and

- December 2, 2019, appellants made payments totaling \$4,221.14 that satisfied their liability.
4. On May 15, 2022, appellants filed their joint 2016 return claiming an overpayment of tax. FTB determined that appellants were claiming a refund of all amounts paid exceeding their total tax liability for the 2016 tax year.¹ FTB denied the claim for refund because appellants filed it after the statute of limitations expired.
 5. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file; (2) four years from the due date for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. The taxpayer has the burden of proof in showing that the claim is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U. S. v. Brockamp* (1997) 519 U.S. 347, 351). The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*)). A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Appellants do not contest – and OTA finds no error in – FTB's determination that appellants' claim for refund was untimely under the four-year and one-year statute of limitations. Rather, appellants contend on appeal that a refund should be allowed because appellants were facing financial difficulty. Appellants assert that appellant M. Sullivan faced serious health concerns, including melanoma and breast cancer, related surgeries, and radiation treatment. Appellants also assert that appellant D. Sullivan was impacted by the COVID-19 pandemic.

¹ Appellants requested a \$6,029.00 refund on their return, however, their return failed to account for their payments made pursuant to FTB collection nor FTB's imposition of the penalty and fee. On appeal, the parties agree that \$9,525.64 is the amount at issue.

Appellants further contend that a refund should be allowed because they overpaid on liabilities determined by FTB.

R&TC section 19316 is an exception to the statute of limitations that extends the time for filing a claim for refund if the taxpayer is “financially disabled,” meaning that: (1) “[the] individual taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months;” and (2) there is no spouse or other legally authorized person to act on the taxpayer’s behalf in financial matters. When a taxpayer alleges financial disability to toll the statute of limitations period to file a timely claim for refund, a physician’s affidavit must be provided that identifies the disability period when the taxpayer was unable to manage his or her financial affairs. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) To suspend the statute of limitations, the period of financial disability must occur during the limitations period. (*Ibid.*)

Appellants contend that they faced financial difficulty. Appellants also describe appellant M. Sullivan’s serious health conditions. However, they have not specifically alleged that appellant M. Sullivan was financially disabled. The law requires a physician’s affidavit and OTA cannot waive this requirement. (*Appeal of Estate of Gillespie, supra.*) Without a physician’s affidavit, the period of financial disability cannot be established for purposes of tolling the statute of limitations and FTB’s determination must be upheld.

Furthermore, a taxpayer will not be considered financially disabled for any period where their spouse or any other person is legally authorized to act on their behalf. (R&TC, § 19136(b)(2).) Here, there is no evidence that appellant D. Sullivan, appellant M. Sullivan’s spouse, was unable to file the return or hire a tax preparer during the relevant time period (i.e., between April 15, 2017, and May 15, 2022). Though appellants assert appellant D. Sullivan was affected by COVID-19, the pandemic occurred long after April 15, 2017, the due date of appellants’ 2016 tax return. Additionally, the four-year statute of limitations for individuals to claim a refund for the 2016 tax year was postponed to May 17, 2021.² Yet appellants filed their 2016 return nearly a year later (five years after it was due), on May 15, 2022.

² See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.

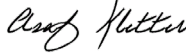
Lastly, appellants imply that they paid tax liabilities which FTB incorrectly determined; however, their claims were untimely under R&TC section 19306(a). A taxpayer’s untimely filing of a claim for any reason bars a refund, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Benemi, supra.*)

HOLDING

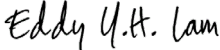
The statute of limitations bars appellants’ claim for refund for the 2016 tax year.


DISPOSITION

FTB’s action in denying appellants’ claim for refund is sustained.

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:

1EAB8BDA3324477
Eddy Y.H. Lam
Administrative Law Judge

DocuSigned by:

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Tommy Leung
Administrative Law Judge

Date Issued: 5/17/2023